

#### § 4.479

on the merits has the right to appeal to the Board under the procedures in this part.

[68 FR 68771, Dec. 10, 2003, as amended at 75 FR 64669, Oct. 20, 2010]

#### § 4.479 Effectiveness of decision during appeal.

(a) Consistent with the provisions of §§ 4.21(a) and 4.472(e) and except as provided in paragraphs (b) and (c) of this section or other applicable regulation, a final BLM grazing decision will not be effective—

(1) Until the expiration of the time for filing an appeal under § 4.470(a); and

(2) If a petition for a stay is filed under § 4.471(a), until the administrative law judge denies the petition for a stay or fails to act on the petition within the time set forth in § 4.472(d).

(b) Consistent with the provisions of §§ 4160.3 and 4190.1 of this title and notwithstanding the provisions of § 4.21(a), a final BLM grazing decision may provide that the decision will be effective immediately. Such a decision will remain effective pending a decision on an appeal, unless a stay is granted by an administrative law judge under § 4.472 or by the Board under § 4.478(a).

(c) Notwithstanding the provisions of § 4.21(a), when the public interest requires, an administrative law judge may provide that the final BLM grazing decision will be effective immediately.

(d) An administrative law judge or the Board may change or revoke any action that BLM takes under a final BLM grazing decision on appeal.

(e) In order to ensure exhaustion of administrative remedies before resort to court action, a BLM grazing decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless—

(1) A petition for a stay of the BLM decision has been timely filed and the BLM decision has been made effective under § 4.472(e), or

(2) The BLM decision has been made effective under paragraphs (b) or (c) of this section or other applicable regulation, and a stay has not been granted.

(f) Exhaustion of administrative remedies is not required if a stay would not render the challenged portion of the

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BLM decision inoperative under subpart 4160 of this title.

[68 FR 68771, Dec. 10, 2003]

#### § 4.480 Conditions of decision action.

(a) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative, and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing preference will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of part 4100 of this title.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003]

#### Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 71 FR 6366, Feb. 8, 2006, unless otherwise noted.

#### GENERAL PROVISIONS

#### § 4.601 What is the purpose of this subpart?

(a) The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”) before the Department of the Interior. Under the Act, an eligible party may receive an award when it prevails over the Department or other agency, unless the position of the Department or other agency was substantially justified or special circumstances make an award unjust. The regulations in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures

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and standards that the Office of Hearings and Appeals will use in ruling on those applications.

(b) The regulations in this subpart apply to any application for an award of attorney fees and other expenses that is:

- (1) Pending on February 8, 2006; or
- (2) Filed on or after February 8, 2006.

### § 4.602 What definitions apply to this subpart?

As used in this subpart:

*Act* means section 203(a)(1) of the Equal Access to Justice Act, Public Law 96-481, 5 U.S.C. 504, as amended.

*Adjudicative officer* means the deciding official(s) who presided at the adversary adjudication, or any successor official(s) assigned to decide the application.

*Adversary adjudication* means any of the following:

- (1) An adjudication under 5 U.S.C. 554 in which the position of the Department or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding;
- (2) An appeal of a decision of a contracting officer made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Interior Board of Contract Appeals pursuant to section 8 of that Act (41 U.S.C. 607);
- (3) Any hearing conducted under section 6103(a) of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.); or
- (4) Any hearing or appeal involving the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

*Affiliate* means:

- (1) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant; or
- (2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest.

*Demand* means the express demand of the Department or other agency that led to the adversary adjudication, but does not include a recitation by the Department or other agency of the maximum statutory penalty:

(1) In the administrative complaint; or

(2) Elsewhere when accompanied by an express demand for a lesser amount.

*Department* means the Department of the Interior or the component of the Department that is a party to the adversary adjudication (e.g., Bureau of Land Management).

*Final disposition* means the date on which either of the following becomes final and unappealable, both within the Department and to the courts:

- (1) A decision or order disposing of the merits of the proceeding; or
- (2) Any other complete resolution of the proceeding, such as a settlement or voluntary dismissal.

*Other agency* means any agency of the United States or the component of the agency that is a party to the adversary adjudication before the Office of Hearings and Appeals, other than the Department of the Interior and its components.

*Party* means a party as defined in 5 U.S.C. 551(3).

*Position of the Department or other agency* means:

- (1) The position taken by the Department or other agency in the adversary adjudication; and
- (2) The action or failure to act by the Department or other agency upon which the adversary adjudication is based.

*Proceeding* means an adversary adjudication as defined in this section.

*You* means a party to an adversary adjudication.

### § 4.603 What proceedings are covered by this subpart?

(a) The Act applies to adversary adjudications conducted by the Office of Hearings and Appeals, including proceedings to modify, suspend, or revoke licenses if they are otherwise adversary adjudications.

(b) The Act does not apply to:

- (1) Other hearings and appeals conducted by the Office of Hearings and Appeals, even if the Department uses procedures comparable to those in 5 U.S.C. 554 in such cases;
- (2) Any proceeding in which the Department or other agency may prescribe a lawful present or future rate; or